

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

LARRY S. BANKHEAD,

Plaintiff,

v.

**CIVIL ACTION NO. 2:04cv 59
(Maxwell)**

**JO ANNE B. BARNHART,
COMMISSIONER, SOCIAL
SECURITY ADMINISTRATION,**

Defendant.

ORDER

It will be recalled that by Order entered on March 9, 2005, the Court dismissed the above-styled social security action for failure to prosecute and for failure to comply with the Court's Order of November 22, 2004, which Order directed the parties to file their Motions for Summary Judgment on or before January 24, 2005. It will further be recalled that on March 22, 2005, Counsel for Plaintiff filed a Motion for Reconsideration of Plaintiff's Motion for Judgment on the Pleadings and Motion to Vacate Opinion Memorandum and Judgment Order.

On April 28, 2005, the Court entered an Order referring the matter to United States Magistrate Judge John S. Kaull. The docket indicates that a hearing on Plaintiff's Motion for Reconsideration of Plaintiff's Motion for Judgment on the Pleadings and Motion to Vacate Opinion Memorandum and Judgment Order was held by the Magistrate Judge on May 10, 2005. Thereafter, on September 30, 2005, Magistrate Judge Kaull filed his Report and Recommendation, wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written

objections within ten (10) days after being served with a copy of the Report and Recommendation. On October 4, 2005, Plaintiff filed Plaintiff's Limited Objection and Exception to Magistrate Judge's Opinion/Report and Recommendation Order, which objects only to the Magistrate Judge's Order that the case is fully briefed. Plaintiff also filed on October 4, 2005 a Motion for Leave to File a Supplemental Brief in Support of Motion for Summary Judgment.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised were thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation. Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Upon review of Plaintiff's limited objection, the Court finds that the Plaintiff is not objecting to the Report and Recommendation portion of the Magistrate's Opinion/Report and Recommendation and Order, but instead is objecting to the Order portion in that Magistrate Judge Kaull found that the case has been fully briefed and directed that no more submissions shall be filed. Therefore, the Court finds that no ruling is required at this time on the Plaintiff's limited objection and that the Plaintiff's Motion For Leave to File Supplemental Brief in Support of Motion for Summary Judgement should accordingly be referred to Magistrate Judge Kaull for determination. Based on the aforementioned, it is hereby

ORDERED that Magistrate Judge Kaull's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action proceed in accordance with the recommendation of the Magistrate Judge. Accordingly, it is further

ORDERED that the Court's Order of March 9, 2005, dismissing this case be, and the same hereby is, **VACATED** and this matter is hereby **REINSTATED** on the Court's docket. It is further

ORDERED that the Plaintiff's Motion for Judgment on the Pleadings, which was attached as an exhibit to Plaintiff's Motion to Vacate filed on March 22, 2005 (docket #13), be filed by clerk.

The Court having seen and inspected the Defendant's Motion For Summary Judgment, filed January 24, 2005, the Plaintiff's Motion for Judgment on the Pleadings, and the Plaintiff's Motion For Leave to File Supplemental Brief in Support of Motion for Summary Judgement, it is further

ORDERED that, pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B), Rule 72 of the Federal Rules of Civil Procedure, and Rule 7.02(c) of the Local Rules of Civil Procedure, said Motions, and all future motions, are **REFERRED** to United States Magistrate Judge John S. Kaull. The Magistrate Judge is authorized to conduct any necessary proceedings in determining the motions or in preparation for submission of the proposed findings of fact and recommended disposition.

The Clerk is directed to transmit copies of this Order to counsel of record herein.

Enter: January 23rd, 2006

/s/ Robert E. Maxwell

United States District Judge